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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Filed: February 11, 2008

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PIONEER NAVIGATION LTD.,

Case No. 08 CV 01323

JUDGE MARRERO

Plaintiff,

- against -

VERIFIED COMPLAINT

STAR SHIPPING A/S,

Defendant.

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Plaintiff, **PIONEER NAVIGATION LTD.**, (hereinafter “**PIONEER**”), by its attorneys, **JUNGE & MELE, LLP**, complaining of the Defendant, **STAR SHIPPING A/S** (hereinafter “**STAR SHIPPING**”), respectfully alleges as follows:

1. This is a case of admiralty jurisdiction pursuant to 28 U.S.C. §1333(1), and an action in aid of foreign arbitration pursuant to the Arbitration Act, 9 U.S.C. §1, *et seq.*, and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. §201, *et seq.*, and maritime claim within the meaning of Rules 9(h) and 38(e) of the Federal Rules of Civil Procedure.

2. At all times relevant, Plaintiff **PIONEER** was a foreign corporation with a place of business located at The Peek Building, George Street, P.O. Box N 8160, Nassau, Bahamas.

3. At all times relevant, Defendant **STAR SHIPPING** was a foreign business corporation, with a place of business located at Fortunen 1, P.O. Box 1088 Sentrum, N-5809 Bergen, Norway.

4. At all times relevant, **PIONEER**, as disponent owner of the vessel “**TAI SHUN HAI**,” time chartered said vessel to **STAR SHIPPING** for one voyage of about 40 to 45 days, commencing between December 27, 2007 and January 5, 2008, from Brazil to Jeddah, Saudi Arabia, with a cargo of sugar in bulk at a charter hire rate of \$71,000 per day, payable to **PIONEER** every 15 days, and subject to such other terms and conditions as more fully set forth in the fixture re-cap message dated December 12, 2007, a true copy of which is annexed hereto as *Exhibit “1.”*

5. On or about January 29, 2008, in breach of the charter party provisions stating that representations of the vessel’s speed and fuel consumption was given in good faith by **PIONEER** “without guarantee,” **STAR SHIPPING** deducted from its hire payment to **PIONEER** the amount of \$420,000, based on a claim of under-performance of the vessel. True copies of messages between the parties confirming **STAR SHIPPING**’s continued refusal to remit payment of said charter hire then due and owing is annexed hereto as *Exhibit “2.”*

6. Under the terms of the governing charter party and *pro forma* agreements, disputes between the parties are to resolved in arbitration at London, under English law, and this proceeding is brought in aid of said arbitration, either pending or contemplated.

7. Under English law, the statement of a vessel’s speed and consumption in a time charter description clause which is given “without guarantee” is not a contractual warranty, but is merely a representation of an estimate given in good faith. *See Losinjska*

v *Valfracht, The Lipa* [2001] 2 Lloyd's Rep 17, as affirmed; and as such, Defendant's deduction of \$420,000 from its hire payment to Plaintiff based on a claim of under-performance of the vessel constitutes a breach of a maritime contract.

8. As best as can now be estimated, Plaintiff expects to recover the following amounts in London Arbitration: on the principal claim, \$420,000; on interest, costs and attorney's fees through the end of arbitration in London, \$100,000; for a total award amount of \$520,000.

9. Defendant cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, but Defendant is believed to have or will have during the pendency of this action, assets within this District consisting of cash, funds, freight, hire, or credits including but not limited to electronic fund transfers in the hands of garnishees in this District, including but not limited to the following:

1. Citibank, N.A.
2. Bank of America, N.A.
3. Bank of New York
4. Credit Suisse
5. JPMorgan Chase Bank
6. Commerce Bank
7. HSBC (USA) Bank
8. BNP Paribas

9. ABN AMRO Bank
10. Standard Chartered Bank
11. UBS, A.G.
12. Barclay's Bank
13. Wachovia Bank
14. Deutsche Bank and/or Deutsche Bank Trust Co. Americas
15. American Express Bank

WHEREFORE, Plaintiff prays for the following relief:

1. That process in due form of law according to the practice of this Court be issued against Defendants and that Defendants be cited to appear and answer the allegations herein;

2. That, since Defendant cannot be found within this District pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, this Court issue an Order directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, attaching all of the Defendant's tangible or intangible property or any other funds held by garnishees including but not limited to the aforementioned garnishees in the District which are due and owing or otherwise the property of Defendant up to the amount of \$520,000, to secure Plaintiff's claims, and that all persons claiming any interest in the same be cited to appear and pursuant to Supplemental Admiralty Rule B answer the matters alleged in this Verified Complaint.

3. That such property attached pursuant to the Processes of Maritime Attachment and Garnishment remain sequestered to serve as security for the payment of Plaintiff's claims as they may be embodied in any award issued out of arbitration in London.

4. That Plaintiff have such other and further and different relief as may be just and proper, including judgment against Defendant, along with interest, costs and disbursements as allowable under law.

Dated in the City of New York on February 8, 2008

Respectfully submitted,

JUNGE & MELE, LLP
Attorneys for Plaintiff

/S/ PETER A. JUNGE

Peter A. Junge (PJ-0745)
29 Broadway
New York, NY 10006
(212) 269-0061

VERIFICATION

PETER A. JUNGE declares as follows:

1. I am a member of the bar of this Honorable Court and of the firm of Junge & Mele, LLP, attorneys for Plaintiff.
2. I have read the foregoing Complaint and I believe the contents thereof are true.
3. The reason this Verification is made by deponent and not the Plaintiff is that Plaintiff is a foreign corporation with no officers or directors within this jurisdiction.
4. The source of my information and belief are documents provided to me, statements made to me by representatives of Plaintiff, and publicly available documents concerning the Defendants on the internet.
5. I declare under penalty of perjury that the foregoing is true and correct.

Dated in the City of New York on February 8, 2008

/S/ PETER A. JUNGE

Peter A. Junge

Exhibit “1”

1346391star.TXT

ReplyTo: James Shaw <hrs.hdy@howerobinson.com>
From: James Shaw <hrs.hdy@howerobinson.com>
To: "Atlas NY" <atlasusa@atlasship.com>
Subject: TAI SHUN HAI / STAR SHIPPING
Date: Thu, 13 Dec 2007 16:53:53 +0000

Howe Robinson Shipbrokers - Handy / Handymax Dept.
London - Hong Kong - Shanghai - Tokyo - Johannesburg - Hamburg

E-mail: hrs.hdy@howerobinson.com
JNS44900239 13/12/2007 16:53:53

GAURAV / JAMES

RE: TAI SHUN HAI / STAR SHIPPING

==

PLEASED TO CONFIRM HAVING FIXED AS FOLL:-

C/P DD 13 DECEMBER 2007

m/v Tai Shun Hai
sdk bulker eb aft
PRC flag blt 1991
47,377mt dwat on 11.724m ssw
tpc loaded 52.83
5 holds/5 hatches
56,987 cubm gr cap in mh
4x25mt cranes
LOA/Beam/Depth Moulded 189.94/32.2/16.6m
Grt/nrt 27,598/15,047
Speed/cons abt 13.0kn on abt 23 mt ifo 380cst plus abt 1.8 mt mdo
all details about and wog

Pls note vsl's full t/c description as follows:

MV.TAISHUNHAI

A.Specifications

- 1) Vessels Name: TAI SHUN HAI
- 2) Former Name:NIL
- 3) Type of vessel:SDBC
- 4) Flag:PR CHINA
- 5) Shipyard/year and month the vessel was built: OCT 1991
- 6) LOA (mtrs):189.94
- 7) Beam (mtrs):32.2
- 8) Depth moulded (mtrs):16.6
- 9) International GRT/NRT:27598/15047
- 10) Suez Canal GRT/NRT:27904.6/26608.63
- 11) Panama Canal GRT/NRT:28627.02/22121.06
- 12) Summer Dwat (mts) on max.summer draft (mtrs):47377/11.724
- 13) Winter Dwat (mts) on max. winter draft(mtrs):46089/11.480
- 14) Panama Dwat (mts) on max. Panama Draft (mtrs):NIL
- 15) Summer TPC/TPI:52.83
- 16) Winter TPC/TPI:52.64
- 17) Grain/Bale (cubic breakdown of all compartments in cbm):56987/56121
- 18) Number of holds, including dimensions (length x breadth): TTL 5
HOLDS
no.1 27.2 x 7.8/23

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- no.2 28.0 x 23.0
- no.3 22.4 x 23.0
- no.4 28.0 x 23
- no.5 27.2 x 23.0
- 19) Number of hatches, including dimensions:TTL 5 HATCHES
 - no.1 16.0x15.0
 - no.2 17.6x15.0
 - no.3 17.6x15.0
 - no.4 17.6x15.0
 - no.5 17.6x15.0
- 20) Type of Hatch Covers:SIDE ROLLING
- 21)
 - aa) Flat Tanktop dimensions in mtrs: SEE G/A LATER
 - bb) Strength on tanktop per sqm:
NO.1 AND NO.5: 24MT; NO.2 AND 4:18MT; NO.3:25MT
- 22) Strength on Hatch Covers per sqm:17.15KN
- 23) Deck space without obstacles: YES
- 24)
 - aa) Number/Capacity and type of Cranes/Derricks
ELECTRONIC-HYDRO /4x25mt cranes
 - bb) hoisting speed at full work load - half work load - no work
load: NO RECORD
 - cc) slewing speed at full work load - half work load - no work
load:
NO RECORD
 - dd) topping speed at full work load - half work load - no work
load:
NO RECORD
- 25) Location of Cranes/Derricks: btwn HOLD.1/2, 2/3, 3/4. 4/5
- 26) Vessels Call Sign: BONE
- 27) Port of registry and registry no. tianjin/020100389
- 28) Vessels classification society: CCS
- 29) Vessels Class:csa 5/5 bulk carrier,strengthened for heavy cargoes,
hold no.2&4 may be empty, ice class b
- 30) Validity period of vessels class certificate:
(copy of vessels class certificate to be faxed to our office)
- 31) P+I Club: CPI
(copy of the Entry Certificate to be faxed to our office)
- 32) Distance from waterline to top of hatch coaming
 - aa) in heavy ballast condition: ABT 10M
 - bb) in light ballast condition:ABT 12.30M
- 33) Distance from waterline to highest point
 - aa) in heavy ballast condition:40.5M
 - bb) in light ballast condition:43M
 - cc) in laden conditionDEPEND ON CARGO QTY
- 34)
 - aa) Distance from tanktop to underside of closed hatch covers:
ABT17.3M
 - bb) Distance from tanktop to underside weatherdeck:ABT15M
 - cc) Distance from tanktop to underside tweendeck:NIL
 - ee) Distance from tweendeck to underside weatherdeck:NIL
 - ff) Distance from top of hopper to underside weatherdeck:ABT 2.6M
 - gg) Distance from top of hopper to bottom of wing tanks:ABT 18M
 - hh) Distance from ship's rail to inside of hatch coaming:ABT8.7M
 - ii) Distance from deck to underside of crane pedestal:ABT 5M
 - jj) Distance from deck to top of hatch cover:ABT 3.1M
 - kk) Distance from hatch cover to underside of crane-jib:ABT 2M
- 35) Vessels full tank capacity in mts for
 - aa) IFO:ABT 1600 CBM
 - bb) MDO/MGO:ABT 115.2 CBM
 - cc) Fresh water:474 CBM
- 36) Constants excluding freshwater:ABT 625MT
- 37) Quantity of Freshwater on board:RVTG

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- 38) Freshwater evaporator?
If yes please advise daily production in mts: ABT 15MT
- 39) Are vessel's holds free of obstructions? YES
- 40) Is vessel suitable for grabdischarge? YES
- 41) Does the vessel have grabs on board? NO
- 42) Is the vessel grainfitted? YES
- 43) Is the vessel CO2 fitted? YES
- 44) Is the vessel Suez/Pamana Canal fitted? YES
- 45) Hold ventilation (natural or electric)? NATURAL
- 46) Vessels ice class/strengthened: CLASS B
- 47) Does the vessel have australian hold ladders? YES
- 48) Is the vessel container fitted (if yes please advise container capacity)? NO
- 49) Is the vessel ITF fitted? YES
- 50) Permanent stanchions on deck?: NO
- 51) Closed rail?: YES
- 52) Is the vessel fully logs fitted fitted including all lashing materials and stanchions required for a full cargo of logs under/on deck? NO
- 53) Vessel's Telex no.(s):441293710
- 54) Vessel's Phone no.(s):1570417
- 55) Vessel's Fax no.(s):1570420
- 56) Vessel's E-Mail no.(s): NO
- 57) Vessel's last six cargoes:
- 58) Vessel's last special survey (when/where and nature of work performed):
- 59) Vessel's last drydock (when/where and nature of work performed):
- 60) Vessel's casualty and pollution history: NO
Collisions, Groundings, Pollution,(Oil/Bunker spills and others)
Fire, Cargo damage etc.over the last two years: NO
- 61) Has the vessel been arrested in the previous 12 months?: NO
(if yes please advise details)
- 62) Last port state control inspection:
- 63) Hull and machinery insured with:
Insured value: SEE FAXED CERTI
- 64) Collision Insurance insured with:
Insured value: SEE FAXED CERTI
- 65) Lay-Up: has vessel been in Lay-Up (when/where/period):NO
- 66) Warranties:
aa) Owners warrant that vessel will not be sold for scrap after this voyage/period NO
- 67) Master's name and nationality: /CHINESE
- 68) Number and nationality of the crew:28 crew and 4 noviciates
- 69) Please confirm that master and crew are speaking fluent english: YES
- 70) Please advise employment of crew and officer
(Owner/Manager/Crewing Agency): COSCO TIANJIN CREW MANAGER

- =====
- 1) SPEED AND CONSUMPTION IN FULLY LADEN CONDITION: abt 13.0 kn on
abt 23mt ifo + 1.8mt mdo
- 2) SPEED AND CONSUMPTION IN BALLAST CONDITION:abt 13.0 kn on abt
23mt ifo + 1.8mt mdo
- 3) ECONOMICAL SPEED AND CONSUMPTION:NO RECORD
- 4) CONSUMPTION IN PORT:
AA) GEAR IDLE:1.5mt mdo
BB) GEAR WORKING 8 HOURS:1.8mt mdo
CC) GEAR WORKING 24 HOURS:2.6mt mdo
- 5) BUNKER SPECIFICATIONS:ifo 380cst,rmg35,in accordance with
iso 8217,96e mdo, dmb, in accordance with iso 8217,96e
- =====

- 1) Name/Address and contactable nos. of registered Owners:
COSCO BULK CARRIERS CO.,LTD.

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ROOM 1002 NO.1 OCEAN PLAZA

HEBEI DISTRICT TIANJIN PR CHINA 300010

2) Name/Address and contactable nos. of Managers:

OPERATION DEPT.TEL:+86-22-24206114 FAX:+86-22-24206604

PIC:CAPT.GAO DACHUAN EMAIL:GAODCH@cosbulk.com

ALL ABOVE ABOUT AND WOG

- Head Owners: Cosco Bulkcarrier Co., Ltd., Tianjin
- Disponent Owners: Pioneer Navigation Ltd., Nassau, Bahamas
- VSL IS ISM AND ISPS CODE COMPLIANT
- VSL IS PNI COVERED AND CLASSED LLOYDS 100A1 OR EQUIV
- VSL IS SDSTBC AND IS SUITABLE FOR GRAB DISCHARGE

FOR

- Account Star Shipping AS, Bergen
- All negotiations and eventual fixture to be strictly P&C
- Delivery dlosp Santos atdnshinc
- Laycan 27 Dec 07 / 05 Jan 08
- one tct via sp(s) sb(s) sa(s) aa awiwl via ECSA int Brazil to Saudi Arabia int Jeddah with cargo of sugar in bulk duration abt 40/45 days wog
- Hire USD 71,000 daily inclot plus USD 1,100,000 gbb
Hire payable every 15 days in advance. 1st hire plus gbb and bod to be paid w/in 03 banking days after dely
- ILOHC USD 4,500.00 lumpsum
- C/V/E USD 1,500.00 per month pro rata
- Redely passing Aden or Suez in owners option atdnshinc
- Bunker clause:
BOD as onboard est abt 600/700 mt ifo and abt 50/70 mt mdo
BOR same as on dely

prices bends USD 480 pmt ifo and USD 800 pmt mdo
- HOLD CONDITION ON ARRIVAL AT FIRST LOADING PORT, THE HOLDS TO BE SWEPT CLEAN, DRIED AND FREE FROM RUST SCALE, FREE FROM PREVIOUS CARGO RESIDUES AND ODOURLESS, AND IN EVERY RESPECT READY TO RECEIVE CHRTS' INTENDED CARGO. IF VSL FAILS ANY SHIPPERS AND/OR AUTHORITIES SURVEYS, THEN VSL TO BE OFF-HIRED FROM THE TIME OF FAILURE OF ANY SURVEY UNTIL ALL HOLDS HAVE PASSED ALL INSPECTIONS AND/OR SURVEYS
- 3.75 pct adcom plus 1.25 pct Howe Robinson London
- OWISE OWS C/P 'QIN HAI'/ NYK BULKSHIP EUROPE C/P DD 10 AUGUST 2006 WITH OBVIOUS , NATURAL AMENDMENTS AND FOLL ALTERATIONS:-
- LINE 56 - DELETE "30" AND INSERT "20"
DELETE "20"
- CL. 42 - 4TH LINE AFTER "FORMAT" INSERT "SIGNED BY CHRTS ONLY"

1346391star.TXT

CL. 51 - DELETE

CL. 57 - DELETE "AND CONDITION"

CL. 72 - DELETE IN FULL AND INSERT "NO DRYDOCKING EXCEPT IN CASE
OF EMERGENCY"

CL. 82 - DELETE

CL. 88 - OWNERS BANKING DETAILS :

HSBC BANK PLC
8 LIBRARY PLACE
SAINT HELIER, JERSEY
J34 8NJ
CHANNEL ISLANDS

SWIFT REFERENCE : MIDLGB22
FOR ACCOUNT OF : PIONEER NAVIGATION LTD
USD ACCOUNT NO : 67 601 730
IBAN : GB58MIDL40051567601730
REF : Tai Shun Hai/Star

END

MANY THANKS AGAIN FOR THIS FURTHER FIXTURE

BEST REGARDS/JNS

Howe Robinson - London - Switchboard - 020 7488 3444
James Shaw - Desk - 020 7457 8706 - Mobile - 07767 478180

This e-mail and any attachments are believed to be free from viruses but it is your responsibility to carry out all necessary virus checks. Howe Robinson Shipbrokers accepts no liability for any damage caused by any virus transmitted by this e-mail.

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Exhibit “2”

REF: CP1386834

John/Costas

lwg msg for charterers

Re Mv Tai Shun Hai sub t/c Star Shipping AS, Tcp dated 13 Dec 2007

Owners refer to their message dated 29 Jan 08 to which no response has been received.

++++

Owners acknowledge charts hire statement.

Owners would advise as follows:-

1) Charterers as per above dated tcp are not entitled to deduct any amounts from vessel hire alleging estimated under performance.

2) As per fixture recap dated 13 Dec 2007 vessel was fixed as follows:-

quote

PLEASED TO CONFIRM HAVING FIXED AS FOLL:-

C/P DD 13 DECEMBER 2007

m/v Tai Shun Hai
 sdk bulker eb aft
 PRC flag blt 1991
 47,377mt dwat on 11.724m ssw
 tpc loaded 52.83
 5 holds/5 hatches
 56,987 cubm gr cap in mh
 4x25mt cranes
 LOA/Beam/Depth Moulded 189.94/32.2/16.6m
 Grt/nrt 27,598/15,047
 Speed/cons abt 13.0kn on abt 23 mt ifo 380cst plus abt 1.8 mt mdo
 all details about and wog

unquote

The mere statement as to ships speed and consumption in a time charter description clause which is given ""without guarantee"" does not even amount to a contractual warranty. It only refers to a representation that the statement is an estimate given in good faith.

Pls refer to the law case "" LIPA"" 2001 2 lloyds rep17.0 which is being reaffirmed by the higher courts.

On this basis owners request immediate refund of US\$ 420,000.00 deducted fm hire.

In the meantime owners reserve fully their rights under the above dated c/p.

2/8/2008

Pls acknowledge receipt.

Tks/Brgds
Atlas Shipping Ltd.,
as agents

end

+++++

PGW46630799 31/01/2008 10:18:06

MIKE / PETER

+++

FOLL FRM CHRTS:

TAI SHUN HAI C/P 13.12.07

We acknowledge receipt of your e-mail Jan 30 and would like to comment as follows:

1)

There is no clause in C/P that prohibits us from making deduction from hire related to underperformance and/or partial off-hire.

2)

Although we are aware of the implications of inserting 'without guarantee' in vessel's description, it is a precondition that the estimated speed & consumption figures were given in good faith. In order convince us that this was the case, please provide us with recent performance analysis in laden condition as close as possible to the C/P date. The loss of time so far is of such a magnitude that further investigation is required. Please also instruct Master to forward a fully completed Voyage Report as soon as possible after arrival Jeddah.

We are looking forward to receiving the necessary documentation.

Regards
Star Shipping a.s.

unquote

+++++

Would appreciate if you could place us in a position to reply.

Tks/Brgds
Atlas Shipping Ltd.,
as agents

end

2/8/2008